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LEGAL SERVICE PLANS (RATE FILINGS)

(All references to the Advisory Committee on Prepaid Legal Services should be disregarded as Chapter 58, section 31 of the Acts Of 1996, eliminated the Committee)

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A. Chapter 176H: Section 6: Rates under insured legal services plan

Rates

_____ The rates to be charged by an insurer for an insurance certificate contract under an insured legal services plan approved under the provisions of this chapter shall be filed and determined in accordance with the provisions of MGL c. 175A, sections 1 to 5, inclusive, and 6 to 20, inclusive.

_____ The rates to be charged by an insurer under a group insurance policy for legal services benefits shall be filed and determined in accordance with such provisions of MGL c. 175A; provided, however, that such filing and determination procedure shall not apply to any insurer which maintains at all times an unassigned surplus of not less than twenty million dollars.

Applicability

_____ The filing and determination procedure shall not apply to any insurer, which maintains at all times an unassigned surplus of not less than \$20,000,000.

B. Chapter 176H: Section 10: Rates under membership legal services plan

_____ The rates to be charged by a sponsor under a membership legal services plan approved under this chapter shall be filed and determined in accordance with the provisions of MGL c. 175A, sections one through five and six through twenty.

C. Chapter 175A: Section 4: Application; exceptions

1. Applicability

_____ This chapter shall apply to risks and operations in this Commonwealth insured by insurance companies authorized to transact business in this Commonwealth under subdivisions (d), (e) and (f) of the 2nd clause, under the 3rd, 4th, 5th clauses, under subdivisions (b), and (c) of the 6th clause, and under the 7th, 8th, 9th, 10th and 12th clauses of MGL c. 175, s. 47, even though such risks or operations are covered by policies or contracts of insurance issued pursuant to MGL c. 175, s. 22A providing coverage under the aforementioned and any other clauses or subdivisions, other than subdivision (e) of the 6th clause, of MGL c. 175, s. 47 which, as part of the coverage thereof, insure real or personal property against loss or damage by fire at residential locations or which, as part of the coverage thereof, insure the output of a manufacturer against such loss or damage by fire at locations other than his manufacturing premises.

_____ This chapter shall also apply to insured legal services plans and membership legal services plans under the provisions of MGL c. 176H, and to regulation of rates for such motor vehicle insurance as is provided through the plan approved under MGL c. 175, s. 113H.

THE SPECIFIC STATUTORY SECTIONS REFERENCED HEREIN SHOULD BE EXAMINED TO DETERMINE APPLICABILITY.

Coverage That Section Is Not Applicable To

The provisions of this chapter shall not apply to reinsurance other than joint reinsurance to the extent stated in section 13, nor to insurance against loss of or damage to aircraft or against liability arising out of the ownership, maintenance or use of aircraft, nor to motor vehicle liability insurance coverage which is subject to MGL c. 175, s. 113B, including those coverages described in MGL c. 90, s. 34A and MGL c. 175, s. 113C except as provided through a plan approved under MGL c. 175, s. 113H.

Dual Regulation/Determination by the Commissioner of Applicable Regulatory Law

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory law of this Commonwealth, an insurer to which both laws are otherwise applicable shall file with the Commissioner a designation as to which rate regulatory law shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

2. Chapter 175A: Section 5: Rates; regulatory provisions; insurance company groups

Factors In Making Rates For Coverages Specified In Chapter 175A, section 4

Coverages specified in MGL c. 175A, s. 4 shall have their rates made in accordance with the following provisions:

- _____ 1. Due consideration shall be given to past and prospective loss experience, within and outside this Commonwealth, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to investment income on unearned premium reserves and loss reserves, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this Commonwealth, and to all other relevant factors within and outside this Commonwealth.
- _____ 2. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- _____ 3. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- _____ 4. Rates shall not be excessive, inadequate or unfairly discriminatory.

Uniformity Among Insurers

Except to the extent necessary to meet the provisions of subdivision 4 above, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

Section Does Not Prohibit

- _____ Nothing in this section shall be taken to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications or risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

Nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

Filings By Insurance Company Groups or Similar insurance Trade Designation

Two (2) or more insurers who by virtue of their business associations in the United States represent themselves to be or are customarily known as an "insurance company group," or similar insurance trade designation, shall have the right to make the same filings or to use the same rates for each such insurer subject to the provisions of subdivisions 1 to 4, inclusive, of subsection (a) of this section; and nothing contained in this chapter shall be construed to prohibit an agreement to make the same filings or use the same rates and concerted action in connection with such filings or rates by such insurers.

This subsection shall not apply to two or more insurers who are not under the same common executive or general management or control and who act in concert in underwriting groups or pools.

3. Chapter 175A: Section 6: Rules, rates, classifications; filing with Commissioner; waiver of filing; excessive rate on specific risk; approval

What Must Be Filed

_____ Every insurer shall file with the Commissioner or his designated representative every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use.

Time For Filing

_____ Every such filing shall be made with the Commissioner at least 15 days prior to the proposed effective date thereof and shall indicate the character and extent of coverage contemplated and the extent and nature of any change in rates, rating plans or premium charges. The Commissioner may by order delay the effective date for not more than 30 additional days in any case where she determines such delay is needed to properly examine the filing and any supporting information filed as requested or to permit a hearing thereon; provided further, however, that, if such filing is made by a medical malpractice insurer with respect to medical malpractice insurance, the Commissioner may further delay the effective date of such filing for not more than 90 additional days.

Nature Of Information To Support Filing

_____ The Commissioner may require such insurer to furnish the information upon which it supports such filing. Any filing may be supported by (1) the experience or judgment of the insurer or rating organization making the filing, (2) the experience of other insurers or rating organizations, or (3) any other factors which the insurer or rating organization deems relevant. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

Filing Through Rating Organization

An insurer may satisfy its obligation to make filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Commissioner to accept such filings on its behalf; provided, that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

Changes in Filing Requirements/Examination By Commissioner

Under such rules and regulations as she shall adopt the Commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practically be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The Commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate or unfairly discriminatory.

Excess Rates

_____ Upon the written application of the insured, stating her reasons therefor, filed with and approved by the Commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

What Filings May Consist Of

_____ Filings may consist of manuals of classifications, rules and rates, and rating plans providing for indivisible rate or single premium for policies or contracts of insurance, including policies or contracts of insurance issued by such insurers under the authority of MGL c. 175, s. 22A and providing coverage against the hazards specified in more than one of the clauses or subdivisions of MGL c. 175, s. 47.

_____ To assure reasonable opportunity for the Commissioner to scrutinize rates, insurers and membership plan sponsors must file all proposed rate schedules no less than 15 calendar days prior to their intended effective date.

211 CMR 90.08: Rates

General Standard / Burden of Proof

_____ No insurer or membership plan sponsor shall use rates, which are inadequate, excessive, or unfairly discriminatory.

_____ The rates used shall enable subscribers to receive legal services at a reasonable cost and shall tend to restrain any inflation in the cost of legal services attributable to the operation of legal services plans.

The burden of demonstrating that proposed rates fall within the standards of this article shall lie entirely with the insurer or membership plan sponsor.

Time for Filing Rates / Implementation / Hearings

_____ To assure reasonable opportunity for the Commissioner to scrutinize rates, insurers and membership plan sponsors must file all proposed rate schedules no less than 15 calendar days prior to their intended effective date.

The Commissioner may delay the implementation of any proposed rates for an additional 30 calendar days at his or her sole discretion while the Division conducts an investigation of the proposed rates.

The Commissioner may issue a notice of hearing at any time during the period between the filing of a proposed rate schedule and its effective date. The effective date shall then automatically be postponed until the issuance of a decision approving or disapproving the rates.

If the Commissioner does not issue a notice of hearing, the rates shall become effective on the date specified in the filing or, if the Commissioner has delayed their implementation, on the date specified by the Commissioner.

Rate Filing Requisite

_____ No filing shall be accepted in accordance with this article unless it includes a detailed statement of the procedures used to derive the rates and an explanation by the insurer's or membership plan sponsor's actuary supporting the actuarial assumptions and calculations utilized in the submission.

211 CMR 90.09: Reporting requirements

Time for Reporting

_____ Until such time as the Commissioner notifies an insurer or membership plan sponsor otherwise, each insurer and membership plan sponsor shall file a quarterly report with the Commissioner within 45 calendar days of the close of its fiscal quarter.

_____ The report shall contain a balance sheet, a statement of income and expense, and a statement of changes in financial position.

_____ The statements shall be based on legal services plan operations only.

_____ The financial statements shall be comparable and their form and content shall be governed by those procedures and practices prescribed by generally accepted accounting principles.

_____ The first 4 quarterly reports shall compare actual operations against the related projections appearing in the plan of operation.

_____ The quarterly report shall also include the total number of subscribers, the number of new subscribers, the number of subscriber terminations, and the number of covered legal services provided.

_____ Every insurer and membership plan sponsor shall file with the Commissioner, within 90 calendar days of the close of its first and second fiscal years, a statistical summary by quarter of grievances about participating attorneys, the administration of the plan, and other matters. The report shall be prepared on a form prescribed by the Commissioner.

_____ Every insurer and membership plan sponsor shall annually file an audited financial report with the Commissioner no later than 120 calendar days after the close of its fiscal year. The Commissioner may extend the filing date prior to the due date if an insurer or membership plan sponsor can demonstrate to the Commissioner's satisfaction that an extension is justified. The audited financial report shall be based on legal services plan operations only.

Requirements for Audited Financial Reporting

_____ The audited financial report of insurers shall be prepared in accordance with 211 CMR 19.00, with the following modifications:

_____ (a) 211 CMR 19.04, 211 CMR 19.08(3), 211 CMR 19.10(1)(g), 211 CMR 19.10(7), 211 CMR 19.13 (first paragraph), 211 CMR 19.16, and 211 CMR 19.17 (second paragraph) do not apply.

_____ (b) Calendar year references shall be changed to the analogous fiscal year references.

_____ (c) "The opinions on the financial statements filed pursuant to 19.05(2) shall conform with generally accepted accounting principles." shall be substituted for the third paragraph in 211 CMR 19.09.

_____ The audited financial report of membership plan sponsors shall be prepared in accordance with 211 CMR 19.00, with the following modifications:

_____ (d) "Membership plan sponsor" shall be substituted for "insurer."

_____ (e) 211 CMR 19.04, 211 CMR 19.08, 211 CMR 19.10(1)(9), 19.10(2), 19.10(3), 19.10(5), 19.10(6)(a), 19.10(7), 211 CMR 19.13, 211 CMR 19.16, 211 CMR 19.17 do not apply.

_____ (f) Calendar year references shall be changed to the analogous fiscal year references.

_____ (g) References to the annual statement shall be ignored.

_____ (h) "Statement of income and expense" shall be substituted for 211CMR 19.05(2)(b).

_____ (i) "Statement of changes in surplus" shall be substituted for 211CMR 19.05(2)(d).

_____ (j) "The opinions of the financial statements filed pursuant to 211CMR 19.05(2) shall conform with generally accepted accounting principles." shall be substituted for the third paragraph in 211 CMR 19.09.

Notice of Extraordinary Loss or Claim

Each insurer and membership plan sponsor shall inform the Commissioner within 5 calendar days of any extraordinary loss or claim which has the potential to render it unable to meet its obligations, any impairment of its capital or surplus, or any change in its control.

Definitions

_____ **"Control"** exists if a person, group of persons, or entity possesses the power to direct or cause the direction of the management and policies of an insurer or membership plan sponsor, whether through ownership of voting stock, by contract, or otherwise.

_____ **"Control"** shall be presumed to exist if any person or entity owns, controls, holds with the power to vote, or holds proxies representing 10% of the voting stock of an insurer.

Additional Reports Requested by Commissioner

_____ An insurer or membership plan sponsor shall submit reports in addition to those required under 211 CMR 90.09(1) through 90.09(4) if requested to do so by the Commissioner.

Additional Filing Provisions:

Unfair and Deceptive Trade Practices:

_____ Any filing not in compliance with the above referenced requirements may be deemed to be in violation of the provisions of Chapter 176D of the Massachusetts General Laws. We hereby certify that the provisions set forth in this filing do not entail any intentional unfair and deceptive trade practices. Furthermore, we understand that we are subject to the penalties associated with practices that are in clear violation of this statute.

Required Abstract Forms:

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